IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/12/2004

CORAM

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE AR.RAMALINGAM

C.M.P.No. 10382 of 2004
and
C.M.P.No. 21007/2003 in C.M.A.No.1632/2001

:ORDER

(Order of the Court was made by P. Sathasivam, J.,)

Mr. S. Thuraisingam, appellant in the above Appeal has filed C.M.P.No. 21007 of 2003 praying to modify the order dated 20-8-2 003, made in C.M.A.No. 1632 of 2001, particularly Clause viii (a) by postponing the payment of first instalment of 10 per cent of deposit amount by three months from 19-12-2003 and other conditions proportionately thereafter from the said date.

2. Messrs. Bharathi Gems and Jewels Group of Depositors' Association thorough its President G.E. Krishnan filed C.M.P.No. 10382 of 2004, praying for direction to the competent authority and Commissioner of Land Administration, Chennai-5 and Sub Inspector of Police, Central Crime Branch, Chennai, respondents 2 and 3 respectively herein, to take possession of all the properties handed over to S. Thuraisingam, appellant in the impugned appeal on 2-9-2003, pursuant to the order passed in C.M.A.No. 1632 of 2001 dated 20-8-2003. Since both the above petitions relate to the order dated 20-8-2003 passed in C.M.A.No. 1632/2001, the same are being disposed of by the following common order.

3. S. Thuraisingam, proprietor of M/s. Bharathi Gems and Jewels, Chennai, a financial establishment, has filed an application in I.A.No. 45 of 2001 in O.A.No. 14 of 1999 on the file of Special Judge under The Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 ("TNPID Act" in short), Chennai for grant of permission to re-commence his business in the properties and for that purpose to hand over the possession of the attached properties/premises to him. After considering the merits, the said application had been dismissed by the learned Special Judge, against which, the said S. Thuraisingam has filed C.M.A.No. 1632/2001 under Section 11 of the Act before this Court. The appellant was running a business under the name and stile of "Bharathi Gems and Jewels" and it had called for deposits from the public and was paying huge interest on it. Eventually it could not repay the deposits. During 1996 complaints were filed against the

appellant for cheating the depositors. He was arrested and later enlarged on bail. It has been estimated that about Rs.21 Crores is due to the depositors numbering around 9,100. The appellant at the time of arrest had a bank balance of Rs.5,61,032/- and later the amounts invested in Sri Ram Chits amounting to Rs.10,79,800/- was found attached and is now in Court deposit. The appellant had 4 immovable properties. They are:

Immovable Properties Place S.No.
1. Shop 556 sq.ft. F7 Spencer Plaza 26/2 3,27/2 part
769, Anna Salai,
Chennai-2.

2. Shop 10000 s.ft. Kences Tower 7958/B
1, Ramakrishna St.,
T.Nagar,Chennai-17.

3. Shop Enclave 6A, VI Floor, 8th 7958/10-18
Block, -do-

4. 65 sq.flat Kumaran Plot, AB Block
4,Vijaya Sagar 45/1
Sri Devikuppam Main Doc No.3076/90
Road, Valasaravakkam,
Chennai-17.

4. Pursuant to Section 3 of TNPID Act, which came into force on 08-08-1997, the above moveable and immovable properties were attached by the Government in G.O.Ms.No. 918 (Home) (Courts 11A) Department dated 16-7-1998. It was realised that the immovable properties above referred to, even if sold, would not fetch any substantive money to repay even a small portion of the debt due to the depositors. In those circumstances, the Depositors' Association entered into a Memorandum of Understanding on 24-3-2001. Though the said move was agreeable by the Depositors' Association and the proprietor, namely, S. Thuraisingam, the learned Special Judge, on consideration of the provisions of TNPID Act and after holding that the request cannot be acceded to, which runs counter to the provisions of the Enactment, dismissed I.A.No. 45/2001 on 6-11-2001. The said order was challenged in the above Civil Miscellaneous Appeal. After considering the Memorandum of Understanding 24-03-2001 between the appellant and the Depositors' Association, their views as reflected in various meetings, the assurance of third parties with regard to their intention to supply Diamonds and Jewels at whole-sale price and taking note of the fact that even if the properties of the appellant are sold, it would not fetch substantial money to repay even a small portion of the amount due to the depositors, as a temporary measure, this Court by order dated 20-8-2003, approved the Memorandum of Understanding dated 24-3-200 1 subject to fulfilling the following conditions. They are:

" (i) The attachment already made will continue;

(ii) The appellant-S. Thuraisingam will not be relieved against the criminal

liability/prosecution;

(iii) There will be a separate joint bank account in the name of M/s.Bharathi Gems and Jewels and M/s. Bharathi Gems and Jewels Group of Depositors' Association;

(iv) There will be two representatives of the Depositors' Association, preferably the President and the Secretary, and they will have participation in all financial transactions;

(v) The daily collections shall be deposited into the joint account. All the profits shall go to the depositors account after taking incidental expenses, salary etc., and the appellant is not entitled to any share in the profit;
(vi) No property of the appellant or firm shall be sold or disposed of in any manner or mortgaged without the orders of this Court;

(vii) In case of any dispute, the view of depositors shall prevail and they have also the right to approach this Court;

(viii) The party of the first part, namely appellant S. Thuraisingam has to adhere to the time schedule as provided in Memorandum of Understanding and repay the whole of the deposits to all the deposit holders within a time frame of two years as per the following schedule:

(a) Within 45 to 60 days of the reopening of the show rooms  10 per cent of the total deposit amount due.
(b) Within 11 to 12 months of the reopening of the show rooms  45 per cent of the total deposit amount due.
(c) Within 23 to 24 months of the reopening of the show rooms  45 per cent of the total deposit amount due.

ix) The Competent Authority-Central Crime Branch can depute one of its Officers to watch the day-to-day performance of the business, and if they have any suspicion, it would be open to them to approach this Court for necessary orders.

x) Respondents 1 and 3 herein are directed to hand over all the properties referred to in the Memorandum of Understanding to the appellant and two representatives of the second respondentDepositors' Association within a period of one week from to-day, and the appellant is directed to reopen their show-rooms and commence their business within six weeks thereafter.

It is only a temporary arrangement, and it is made clear that if there is any difficulty in implementing and complying with the conditions agreed to, referred to above, the parties can very well approach this Court for modification or for any other direction. Call the Civil Misc., Appeal after three months."

5. It is clear that the said order came to be passed only as a temporary arrangement and it was made clear that if any difficulty in

implementing and complying with the condition agreed to, the parties can very well approach this Court for modification or for further direction. Now the appellant, namely, S. Thuraisingam has filed C.M.P.No. 21007/2003 for modification of the said order, particularly Clause viii (a) of the said order, by postponing the payment of first instalment of 10 per cent of deposit amount by three months from 19-12-2003. Though he highlighted certain grievances in the affidavit filed in support of the said petition, the fact remains that he could not commence business and the third parties i.e., persons dealing with gold jewels and diamonds have not turned up and yet to earn even a single pie after the order dated 20-8-2003. It is relevant to note that pursuant to the order dated 20-8-2003, the properties referred to above were handed over to the said S. Thuraisingam by the competent authority on 02-09-2003. It is seen that thereafter the premises of M/s. Bharathi Gems and Jewels Showroom at Ground floor, Kences Tower, No.1, Ramakrishna Street, T.Nagar, Chennai-600 017 was cleaned and was made ready for commencing the business. The other premises was not cleared by the appellant for want of money. Though the Bharathi Gems and Jewels showroom at Ground floor, Kences Tower, No.1, Ramakrishna Street, T.Nagar, Chennai-17 was opened on 19-10-2003, on that day except some handicrafts goods no jewels were exhibited in the show room and thereby the appellant has totally failed in his commitment. It is also brought to my notice that there was no electricity supply from the day of opening till the date of filing of C.M.P.No.10382/2 004, since the accumulated electricity charges was not paid by the appellant. The parties who have agreed earlier for supplying of jewels at wholesale rate has not done so. Nothing has happened so far except of opening a joint account as per the order in the above C.M.A. and nothing was deposited in the joint account for want of business. According to the deposits, the scheme was utter failure and there is no chance of any improvement. The appellant having failed in his attempt in commencing the business as agreed by him, and having failed to make any payment to the deposits, has not come forward to surrender the properties handed over to him by the competent authority pursuant to the order dated 20-8-2003. He has no locus standi to have the property with him.

6. When the above Civil Miscellaneous Petitions came up for hearing on the last two occasions, a faint request was made by the appellant-S. Thuraisingam that if time is extended, there is likelihood of reviving his business. In the light of the fact that the scheme was approved and this Court permitted the appellant to commence business and all the properties were handed over as per the order dated 20-8-2003, delivery of premises was given on 2-9-2003, except opening of a shop in Kences Tower, No.1, Ramakrishna Street, T. Nagar, Chennai-17, and exhibiting some handicrafts goods for sale on 19-10-2003, the appellant has not shown progress either exhibiting Gems and Jewels or securing more orders for continuing his business. As a matter of fact, from the date of opening, namely, on 19-10-2003 and till this date, there was no electricity supply and the fact remains that he could not restore electricity connection due to non-payment of arrears. In such a circumstance, this Court has no other option except to reject the request of the appellant and no purpose would be served by granting extension of time. As a matter of fact, since the depositors are around 9,100 and the deposited amount comes to Rs.10,79,8 00/-, in order to safeguard their interest, this Court once again directed the Depositors' Association, particularly their Office Bearers to

ascertain the views of their Members through their counsel,for which they unanimously informed this court that they are ready to face the consequences by bringing all the properties of the defaulter by public auction and willing to receive the amount from the proposed auction. As rightly claimed by the depositors, the proprietor of Bharathi Gems and Jewels has not only cheated the deposits in committing default, but also misled this Court by giving false assurance that it will revive its business by granting time. As said earlier, in spite of the order dated 20-8-2003 even after a period of one year and three months, he has neither improved his business nor repaid any amount to the depositors.

7. In the light of what is stated above, C.M.P.No. 2 1007 of 2003 filed by S. Thuraisingam for seeking modification of the order dated 20-8-2003 is dismissed. Consequently, C.M.P.No. 10382 of 2004 filed by M/s. Bharathi Gems and Jewels Group of Depositors' Association is allowed. S. Thuraisingam, proprietor of Bharathi Gems and Jewels, appellant in the C.M.A., is directed to hand over all the properties, attached earlier, to the Competent Authority and Commissioner of Land Administration, Chennai-5 within a period of 2 (two) weeks from to-day, and in case of failure of compliance of the same, the Competent Authority is permitted to take possession of all the properties both movable and immovable of S. Thuraisingam, attached earlier, with the aid of Police. After taking over possession of the properties, the Competent authority is directed to take all sincere endeavour by bringing the properties for sale through public auction by advertising in leading Tamil and English dailies having more circulation in our State as well as in the neighbouring State. After selling the properties and realising the money out tatutory Body, is the ultimate Authority and it will act quickly and try to mitigate the sufferings of the depositors by taking prompt action as directed above. C.M.P.No. 21007/2003 is dismissed. C.M.P.No. 10382/2004 is allowed.

R.B.

Index:- Yes.
Internet:- Yes.

To:-
1. The Special judge (under TNPID Act, 1997), Chennai-104.
2. -do- through the Prl. Sessions Judge, Chennai.
3. The Competent Authority and Commissioner of Land Administration, Chepauk, Chennai-600 005.
4. Sub Inspector of Police, Central Crime Branch, Madras.

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